

Robert S. Reder (024117)  
Alexandra Mijares Nash (023364)  
Kiri T. Semerdjian (033775)  
BLYTHE GRACE PLLC  
4040 East Camelback Road, Suite 275  
Phoenix, Arizona 85018  
Telephone: (602) 237-5366  
Facsimile: (602) 237-5426  
Email: [robert@blythegrace.com](mailto:robert@blythegrace.com)  
Email: [anash@blythegrace.com](mailto:anash@blythegrace.com)  
Email: [kiri@blythegrace.com](mailto:kiri@blythegrace.com)  
Attorneys for Defendant

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Daniel Fellner,

Plaintiff,

v.

Travel 4 All Seasons, LLC

Defendant.

No. 2:19-cv-01719-CDB

**ANSWER**

Defendant Travel 4 All Seasons, LLC (“Travel 4”) answers Plaintiff Daniel Fellner’s (“Fellner”) Complaint as follows:

**Nature of the Action**

1. Travel 4 cannot answer the allegations contained in Paragraph 1 of Fellner’s Complaint because they call for a legal conclusion but denies them to the extent that a response is required.

**Jurisdiction and Venue**

2. Admits.

3. Admits.

4. Admits.

**Parties**

5. Travel 4 is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5 of Fellner’s Complaint and

1 therefore denies the same.

2 6. Admits.

### 3 **Statement of Facts**

#### 4 **A. Background and Plaintiff's Ownership of the Photographs.**

5 7. Travel 4 is without sufficient knowledge or information to form a belief as  
6 to the truth of the allegations contained in Paragraph 7 of Fellner's Complaint and  
7 therefore denies the same.

8 8. Travel 4 is without sufficient knowledge or information to form a belief as  
9 to the truth of the allegations contained in Paragraph 8 of Fellner's Complaint and  
10 therefore denies the same.

11 9. Travel 4 is without sufficient knowledge or information to form a belief as  
12 to the truth of the allegations contained in Paragraph 9 of Fellner's Complaint and  
13 therefore denies the same.

#### 14 **B. Defendant's Infringing Activities.**

15 10. On or about April 5, 2018, Travel 4 affirmatively alleges that it posted a copy  
16 of Fellner's article entitled "Pickleball in Demand on Cruise Ships!" (the "Article") on a  
17 website owned and operated by Travel 4: [www.travel4allseasonsmagazine.com](http://www.travel4allseasonsmagazine.com) (the  
18 "Website"). The Article originally appeared in *The Arizona Republic*, an Arizona newspaper,  
19 and its associated website. The copy of the Article posted by Travel 4 to the Website was  
20 identical to the copy published in *The Arizona Republic* (or on its website) and included a  
21 bold statement that Fellner was the author of the Article.

22 11. Travel 4 affirmatively alleges that it posted an exact copy of Fellner's Article  
23 to the Website and gave Fellner credit as the author but admits that it did not have any  
24 license agreement with Fellner or any permission or consent to post the Article.

### 25 **Claim for Relief**

#### 26 **(Copyright Infringement Against Defendant)**

#### 27 **(17 U.S.C. Sections 106, 501)**

28 12. Travel 4 incorporates by reference its responses to the paragraphs above.

13. Denies.

14. Denies.

15. Denies.

16. Denies.

17. Denies.

18. Denies.

### **General Denial and Affirmative Defenses**

1. Travel 4 denies every allegation not specifically admitted above.

2. Fellner has failed to state a claim upon which relief can be granted.

3. Fellner has not suffered any recoverable damages as a result of Travel 4's alleged conduct.

4. Travel 4 did not breach any legal duty that it allegedly owed to Fellner.

5. Travel 4 did not act intentionally, willfully, unreasonably, or in bad faith towards Fellner.

6. Travel 4 did not violate the Copyright Act, 17 U.S.C. section 101, *et seq.*

7. Travel 4's "fair use" of Fellner's alleged copyrighted work does not constitute infringement. 17 U.S.C. § 107. Fair use is a means through which the defendant may use the copyrighted work "in a reasonable manner without the owner's consent." *Hustler Magazine, Inc. v. Moral Majority*, 796 F.2d 1148, 1151 (9th Cir. 1986). A court may determine whether fair use occurred by considering: "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work." 17 U.S.C. § 107. Despite the four-point test for determining fair use, no single factor is dispositive, nor are there "bright line" rules for the interpretation of section 107. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 577 (1994). Rather, the court should analyze the specific facts of each case in determining whether fair use existed. *Id.* "If, after applying the four factors, there are

1 no material factual disputes, fair use may be resolved on summary judgment.” *Hustler*, 796  
2 F.2d at 1151.

3 8. Fellner’s alleged copyrighted work is in the public domain and therefore  
4 Travel 4 is not liable for infringement.

5 9. Travel 4’s alleged use of Fellner’s alleged copyrighted work was not for  
6 commercial purposes and any alleged use was non-commercial and innocent.

7 10. Travel 4 did not earn any profits or revenue from its alleged infringement of  
8 Fellner’s copyrighted work.

9 11. Fellner failed to identify the Article as a copyrighted work as required.

10 12. Travel 4 asserts all Fed. R. Civ. P. 8(c) affirmative defenses that discovery  
11 shows are applicable.

12 13. Travel 4 reserves the right to supplement or amend any part of its Answer  
13 including adding additional affirmative and defenses based on discovery conducted in this  
14 action.

15 **Prayer for Relief**

16 Travel 4 requests the following relief against Fellner in connection with his  
17 Complaint:

18 A. Judgment in favor of Travel 4;

19 B. Attorneys’ fees, costs, and expenses incurred by Travel 4 in defending this  
20 action;

21 C. Such other relief as the Court deems proper.

22 DATED this 8th day of April 2019.

23 BLYTHE GRACE PLLC

24  
25 s/ Robert S. Reder

Robert S. Reder

Alexandra Mijares Nash

Kiri T. Semerdjian

4040 East Camelback Road, Suite 275

Phoenix, Arizona 85018

Attorneys for Defendant

**Certificate of Service**

I certify that on this 8th day of April 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Richard Liebowitz  
Liebowitz Law Firm, PLLC  
11 Sunrise Plaza, Suite 305  
Valley Stream, New York 11580  
Attorneys for Plaintiff

s/ Patti A. Jennings